

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 05.12.2016****CORAM:****THE HON'BLE MR.JUSTICE R.SURESH KUMAR****W.P(MD) .No.23661 of 2016**

P.Mary Sheela,
Secondary Grade Teacher,
Holy Family Higher Secondary School,
Mukkuttukal,
Manjallumoodu Post,
Kanyakumari District - 629151

... Petitioner

Vs.

1. The State of Tamil Nadu represented
by its Secretary,
Department of School Education,
Fort St. George,
Chennai 600 009.

2. The Director of School Education,
College Road,
Chennai 600 006.

3. The Chief Educational Officer,
Kanyakumari District.

4. The District Educational Officer,
Kuzhithurai,
Marthandam,
Kanyakumari District.

5. The Correspondent,
Holy Family Higher Secondary School,
Mukkuttukal, Manjallumoodu Post,
Kanyakumari District 629 151.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the fourth respondent herein to sanction and disburse incentive increments to the petitioner for acquiring higher qualification of M.A. and M.E.d., degrees.



For Petitioner : Mr.E.V.N.Siva

For R1 to R4 : Mr.K.P.Krishna Das

Government Advocate

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ORDER

The prayer in the writ petition is for a Writ of Mandamus directing the fourth respondent to sanction and disburse incentive increments to the petitioner for acquiring higher qualification of M.A., and M.Ed., degrees.

2. The petitioner was appointed as a Secondary Grade Teacher in the fifth respondent School on 26.11.1990. It is a private aided minority educational institution in terms of Article 30(1) of the Constitution of India.

3. The petitioner already possessed B.Sc., degree during 1988, B.Ed., degree during 1990, M.A., degree during 1999 and M.Ed., degree during 2000. Since the petitioner was appointed as a Secondary Grade Teacher at the fifth respondent School with a qualification of B.Sc., B.Ed., degree and the same was approved on 26.11.1990 onwards. Thereafter, since the petitioner is entitled for incentive increment for having qualified herself with M.A. and M.Ed., degree, the same had been requested through the fifth respondent School.

4. The said proposal sent by the fifth respondent School on 10.07.2015 was returned by the fourth respondent, by order dated 11.08.2015, wherein the cryptic reason given by the fourth respondent is that unless there is any Government Order or guidelines issued by the Director i.e., the second respondent herein, the petitioner's request cannot be considered. The said proposal was again resubmitted by the fifth respondent School, on 06.09.2016.

5. The learned counsel appearing for the petitioner would submit that the issue has already been decided by this Court in a reported decision i.e., 2014 (8) MLJ 746 in the matter of G.Meenalochini vs. Chief Educational Officer, Trichy and in view of the same, as the petitioner has acquired higher qualification, for which he is entitled for incentive increment, the proposal sent by the fifth respondent on behalf of the petitioner ought to have been considered and ought not to have been returned by the fourth respondent. Therefore, the learned counsel appearing for the petitioner would contend that the proposal which was resubmitted once again by the fifth respondent on 06.09.2016, which is pending consideration before the fourth respondent and therefore, the same may be decided by the fourth respondent.



6. However, the learned Government Advocate appearing for the official respondents would contend that the said judgment relied by the petitioner side is not actually deciding the issue raised by the petitioner herein. In that case, the issue of recovery was considered and ultimately, decision was given, here, in this case, the petitioner was appointed as a Secondary Grade Teacher with the said qualification and subsequently, if he acquired any higher qualification, unless there is a Government Order or mandatory guidelines issued by the second respondent, the petitioner's case cannot be considered and therefore, the action on the part of the fourth respondent in returning the proposal submitted by the fifth respondent is justifiable.

7. This Court has considered the rival submissions made by the learned respective counsel.

8. Admittedly, the petitioner has acquired higher qualification. Subsequently, he joined the service at the fifth respondent School. It is not in much dispute that the incumbent as teacher, who secured higher qualification subsequently joined the service or during the service, shall be entitled for incentive increments and in this case, according to the learned counsel for the official respondents, only two times incentive increment would be eligible for an incumbent which the petitioner has already received or not has not been mentioned, when that being so, it cannot be construed that the petitioner would be automatically entitled to get the incentive increment. However, the learned counsel appearing for the petitioner ascertained that she has not been given any incentive increment for the higher qualification is acquired.

9. In view of the facts and circumstances of the case, this writ petition is disposed of with a direction to the fourth respondent to take up the proposal given by the fifth respondent dated 06.09.2016 and decide the same, after verifying the service records of the petitioner that whether she has already paid any incentive increment on acquiring of higher qualification and ultimately, if the fourth respondent decides that the petitioner is entitled to get incentive increment, the same shall be granted and the needful shall be done by the fourth respondent within a period of four weeks from the date of receipt of a copy of this order. No costs.



Sd/-
Assistant Registrar (W)

/True Copy/

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Sub Assistant Registrar

To

1. The Secretary,
Department of School Education,
Fort St. George,
Chennai 600 009.
 2. The Director of School Education,
College Road,
Chennai 600 006.
 3. The Chief Educational Officer,
Kanyakumari District.
 4. The District Educational Officer,
Kuzhithurai,
Marthandam,
Kanyakumari District.
- +1cc to Special Government pleader Sr.79854

akv

AM/EM/MPA/27.12.2016/3P/6C

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